THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.7535, 7538, 7539 and 7557 of 2005

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FRIDAY, THE TWENTY NINTH DAY OF JULY

TWO THOUSAND AND FOUR

Between:

K.Suresh Reddy, S/o.K.Venkatrami Reddy, aged 30 years,

R/o.51-1027-1, Seetharamnagar, Kurnool, Kurnool District.

… Petitioner

(in all the writ petitions)

AND

1. The Deputy Transport Commissioner & Secretary,

Regional Transport Authority, Kurnool and two others.

… Respondents

(in all the writ petitions)

COMMON ORDER:

All these writ petitions are filed by one K.Suresh Reddy, owner of two lorries bearing Nos.AP 21T 8001 and AP 21T 9639. He assails the validity of a memo issued by the first respondent calling upon the petitioner to pay compounding fee under Section 200 of Motor Vehicles Act, 1988 (the Act) for allegedly contravening the provisions of Section 194 of the Act by carrying excess load. The first two writ petitions being W.P.Nos.7535 and 7538 of 2005 are in relation to lorry bearing No.AP 21T 8001 for two different spells of periods. The other two writ petitions being W.P.Nos.7539 and 7557 of 2005 are in relation to lorry bearing No.AP 21T 9639 for two different spells of periods. Though the interlocutory applications are listed today, the writ petitions were heard finally and are being disposed of by this common order.

The facts in brief may be noticed as disclosed in W.P.No.7535 of 2005. The petitioner was engaged as a transport contractor to transport essential commodities from State Warehousing Corporation godown, Kurnool to different taluk and mandal headquarters in Kurnool District. The first respondent issued a show cause notice dated 15.9.2001 calling upon the petitioner to explain as to why a sum of

Rs.18,84,100/- towards compounding fee under Section 200 of the Act should not be levied. The details of calculation of compounding fee were mentioned in the appendix to the notice. The show cause notices issued in all the cases is similar. The same reads as under:

NOTICE

Sub: Motor Vehicles Act – Kurnool District – Goods Carriage A.P.21-T-8001 – Carriage of overloads – Compounding of the offences – Notice U/s.200 of the M.V.Act, 1988 – Issued – Regarding.

Ref: Letter No.125/C/2001, Dt.7.7.2001 from the Regl. Vigilance and Enforcement Officer, Kurnool.

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Sri K.Suresh Reddy of Knl. Regd. Owner of Goods Carriage AP.21-T 8001 is informed that as reported by the Vigilance & Enforcement Officials, Kurnool in the reference cited, his Goods Carriage mentioned in the subject while transporting different goods under the public distribution system carried over loads than the permitted pay load on different dates to different destinations, as detailed in a separate Appendix enclosed to this Notice.

Sri K.Suresh Reddy of Knl. Permit Holder of the vehicle is requested to pay the Compounding Fee amounting to Rs.18,84,100/- U/S 200 of the M.V.Act mentioned in the Appendix to the Notice. If he has any objection to file in this regard, he may appear before the Secretary/Regional Transport Authority, Kurnool for personal hearing at 11.00 A.M. on3.10.2001, failing which it will be construed that he has no explanation to offer and action deemed fit under the Law would be initiated.

Sd/- xxx xxx

SECRETARY,

R.T.A., Kurnool.

The petitioner sent a reply on 26.9.2001 alleging that he never intentionally carried overload in his lorries and he was under the impression that as he was dealing with the transport contract of essential commodities, there is an exemption for carriage of overload, which was loaded into his lorries. He also disputed the authority of the first respondent in levying compounding fee based on the report of the Regional Vigilance and Enforcement Officer (RVEO). The first respondent after considering the explanation, issued impugned memo dated 24.3.2005 requesting the petitioner to pay compounding fee. Four such memos are assailed in these four writ petitions.

The first respondent filed counter affidavit. It is stated that RVEO informed the first respondent that as per the bill book of transportation of rice, wheat and sugar maintained by the Office of the District Manager, A.P.State Civil Supplied

Corporation, the petitioner carried overloads of these commodities on more than 339 occasions during the financial years 2000 and 2001 and based on the such data, show cause notice was issued to the petitioner. It is further contended that as per Section 113 of the Act, carrying of overload by a lorry is prohibited and is an offence under Section 114 of the Act. It is also contended that RVEO has all powers to take/demand production of records pertaining to any motor vehicle and therefore, the said Officer was justified in verifying the bill books and other records from the godown and sending a report.

Two contentions are raised by the learned Counsel for the petitioner. First, it is contended that the impugned memo/order is bad for non-disclosure of reasons. Secondly, based on the report of the RVEO, the respondents are not authorized to come to a conclusion that the petitioner has contravened Section 194 of the act and levy compounding fee under Section 200 of the Act. Reliance is placed on the Judgment of this Court in **M.Muralidhar Reddy v. Deputy Transport Commissioner and Secretary, RTA, Kurnool** and also an unreported judgment dated 23.12.2004 in W.P.No.15462 of 2004 rendered by Dr.G.Yethirajulu,J following the earlier reported case.

Opposing the writ petition, the learned Government Pleader for Transport, Roads and Buildings, Sri Satyanarayana Raju, submits that even where the vehicle is not stopped for checking the overload as contemplated under Section 114 of the Act, based on other material, which comes to the notice of the appropriate authority, it is always permissible to invoke Section 200 of the Act if there is any contravention of Section 194 of the Act. Secondly, he would submit that as per the Government Orders in G.O.Ms.No.504 dated 25.11.1997, the RVEO is one of the Officers authorized to check the vehicles with reference to violation of conditions of permit and therefore, nothing precludes the respondents 1 and 2 from initiating action based on the report submitted by the third respondent. Insofar as the merits of the case are concerned, considerable reliance is placed on the alleged admission made by the petitioner in the explanation to the show cause notice justifying the impugned memo.

The impugned memo does not give any reasons. There is no consideration of explanation submitted by petitioner. On this ground alone the matter does not stand scrutiny by this Court. Needless to mention every public authority should support decision with reasons.

Insofar as the question of initiating action under Section 200 read with 194 of the Act is concerned, the matter is squarely covered by the judgment of this Court in **M.Muralidhar Reddy v. Deputy Transport Commissioner and Secretary, RTA, Kurnool** (supra). This Court having regard to the provisions of Section 114 and also Rule 286 of A.P.Motor Vehcies Rules, 1989 (the Rules) came to the conclusion that the finding as to the overload recorded by an unauthorized officer cannot be the basis for initiating action for compounding the offence under the Act and the Rules. The relevant observations made therein are as follows:

In this context, it needs to be noticed that Section 114 of the Act prescribes the manner in which any action in the event of any vehicle carrying the load over and above the permitted capacity is to be initiated. The vehicle, suspected to be overloaded is required to be taken to the nearest Weigh Bridge and actual weighment be caused. It reads as under:

> "114. Power to have vehicle weighed:- Any person authorized in this behalf by the State Government may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of Section 113, require the driver to convey the vehicle to a weighing device, if any, within a distance of ten Kilometers from any point on the forward route or within a distance of twenty kilometers from the destination of the vehicle for weighment; and if on such weighment the vehicles is found to contravene in any respect the provisions of Section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from the place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with Section 113 and on receipt of such notice, the driver shall comply with such directions.
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> (2) Where the person authorized under sub-section (1) makes the said order in writing he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit."

Further steps can be taken only after such exercise. Under Rule 286 of the A.P.Motor Vehicle Rules, various authorities who can stop the vehicles for examination of the contents of the vehicle are enlisted. The Vigilance and Enforcement Officer of the Civil Supplies Department does not find place in this list. Under Section 207 of the Act, it is only the Police Officer or other person authorized in this behalf that is conferred with the power to seize and detain the vehicle in the events specified therein. Even here, the Vigilance and Enforcement Officer does not find place. Therefore, any finding recorded by any unauthorized officer cannot constitute the basis for the action under the A.P.Motor Vehicles Act and the Rules made thereunder.

A strenuous effort is made by the learned Government Pleader to contend that the ratio in **M.Muralidhar Reddy v. Deputy Transport Commissioner and Secretary, RTA, Kurnool** (supra) requires reconsideration. According to the learned Government Pleader, Section 114 of the Act only enables any Officer of Motor Vehicles Department to stop the vehicle and take weighment and even in the absence of such exercise under Section 114 of the Act, it is still permissible to invoke Section 194 of the Act while coming to conclusion that a goods vehicle was driven with load exceeding permissible weight. I am afraid the submission, even if it is accepted to be plausible, is not relevant for the purpose of this case. The question that would fall for consideration is whether the appropriate authority can invoke Section 200 read with 194 of the Act after lapse of some time based on some information sent by an Officer like RVEO. If the answer is held to be in affirmative, the same would result in denying fairness to the owner of the vehicle. That is the reason Section 114 of the Act contemplates stopping of the vehicle suspected of carrying weight exceeding permissible limits and weighing the vehicle in the

presence of the owner. That is very crucial for an action of this nature. In the absence of such prerequisite, it is not possible to accept the submission of the learned Government Pleader.

Secondly, the reading of the explanation submitted by the petitioner as a whole does not lead to an inference that there is a categorical admission on the part of the petitioner that he carried overload or weight exceeding permissible limits. In fact, the petitioner disputed the authority of the second respondent to levy compounding fee after lapse of several months. The factum of alleged carrying overload and the factum of initiating action under Section 200 read with 194 of the Act, both are different aspects of the matter and one cannot override the other.

As per the show cause notice, the petitioner allegedly carried overloads than permitted by rule during the years 2000 and 2001 but the RVEO submitted a report only in July 2001 to the first respondent. Even while determining the overload allegedly carried by the petitioner's lorries, there must be pre-decisional independent enquiry by the first respondent and therefore, the petitioner is justified in disputing the same.

In the result, for the above reasons, the writ petitions are allowed. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

July 29, 2005.

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